REMARKS

This Amendment and Request for Reconsideration is submitted in response to an outstanding Office Action dated April 17, 2007, the shortened statutory period for response set to expire on July 17, 2007. Accordingly, an extension of time is included herewith. In the event that the Commissioner any other fee is due, the undersigned hereby authorizes the Examiner to charge the Milbank deposit account 13-3250 for any such fee.

I.   Status of the Claims

Please cancel claims 2-7 and 25-26 without prejudice and amend claims 1, 8, 10-14, and 21-24, as indicated above. Claims 1 and 8-24 are now pending in the application. Claims 1, 10, 11, 12, 13, 14, 21, 22, 23, and 24 are independent claims.

Applicant acknowledges the Examiner's citation of statutory authority as a basis for claim rejections.

II.   Rejections under 35 U.S.C. § 101

The Examiner has rejected claims 10, 11, 12, 22 and 23 under 35 U.S.C. § 101 as being directed to non-statutory subject matter. In particular the Examiner states that claims 11 and 22 claim non-statutory transmitted code. Applicant respectfully traverses the rejection.

The Examiner states that claims 11 and 22 claim are directed to transmitted code and for that reason they are non-statutory. The Examiner applies the same rationale to claim 10 [and presumably also claim 21] in rejecting the claim as non-statutory. The Examiner states that although claim 10 is directed to a system, the claim does not indicate anything other than software. Applicant respectfully submits that claims 10 and 21 are directed to a system, comprising means for performing certain steps, and that is different from code transmitted as an information signal. The system of claim 10 is specifically addressed as statutory subject matter

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as provided for in 35 U.S.C. § 112. The Examiner's attempt to lump claims 10, 11, 12, 22 and 23 together as all directed to non-statutory subject matter is improper and the rejection should be withdrawn. However, in the interest of advancing the application to allowance, applicant has included the amendment to claim 10 and similar claim 21, as suggested by the Examiner.

As stated in the January 2007 amendment and response, with respect to claims 11 and 22, applicant submits that in software sale and distribution, code for accomplishing a method may be sold and distributed on a computer readable medium (*e.g.*, claims 12 and 23) for later installation on a computer system. It is also common for software code to be distributed directly to users by electronic down-load to a computer, without transfer of a computer readable medium as part of the sale or distribution. In order to fully protect the various types of sales and distribution activities, applicants have crafted claims to specifically cover electronic transfer of infringing software code, by directing claims 11 and 22 to computer software code **transmitted as an information signal**. Applicants submit that computer executable software code transmitted as an information signal (claims 11 and 22) serves a useful purpose just as a computer readable medium (claims 12 and 23), and a computer with memory and a processor (claims 13 and 24) serve useful purposes. Applicant submits that to be statutory, 35 U.S.C. § 101 requires nothing more. For this reason, applicant requests withdrawal of the rejection of claims 11 and 22.

Applicant also directs the Examiner's attention to claims 84, 85 and 86 of U.S. Patent No. 6,513,020, which issued on January 28, 2003 ("the '020 patent"). Those claims are directed to "A computer data signal embodied in a carrier wave and representing instructions for execution by a computer for ..." Applicant's also direct the Examiner's attention to claims 82 and 83 of the '020 patent. Those claims are directed to a computer program product for ...

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comprising: a computer readable medium having stored thereon ..." Applicants submit that

there is no statutory difference between the subject matter of those claims of the '020 patent and

claims 11 and 22 of the instant application.

Finally, Applicant directs the Examiner's attention to recent holdings from the

Court of Appeals for the Federal Circuit, which clearly show that software code alone is

patentable as a process, and that electronic transmission of software code is eligible for the same

protection as a physical media where the software code is stored. In *Eolas*, the Federal Circuit

stated that "[w]ithout question, **software code alone qualifies as an invention eligible for**

patenting ... at least as processes. ... [T]his software code claimed in conjunction with a

physical structure, such as a disk, fits within at least these ... categories of subject matter within

the broad statutory label of 'patented invention.'" *Eolas Tech. Inc. v. Microsoft Corp.*, 399 F.3d

1325, 1399 (Fed. Cir. 2005) (emphasis added). In *A T & T*, the Federal Circuit quoted *Eolas* for

that proposition, and then stated "we cannot accept [the] suggestion that **software sent by**

electronic transmission must be treated differently for purposes of § 271(f) liability from

software shipped on disks, ... as it would amount to an **exaltation of form over substance.**

[W]hether software is sent abroad via **electronic transmission or shipped abroad on a ... disk is**

a distinction without a difference for the purposes of § 271(f) liability." *A T & T Corp. v.*

Microsoft Corp., No. 04-1285, 2005 WL 1631112, *4 (Fed. Cir.(S.D.N.Y) July 13, 2005)

(emphasis added).

With respect to the rejection of claims 12 and 23, as indicated above a computer

readable medium is different from code transmitted as an information signal. The code

transmitted as an information signal would encompass software code that is downloaded, such as

from a server computer to a client computer in the course of a software sale or distribution, while

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a computer readable medium would encompass software stored on an actual medium, such as a floppy disk, CD ROM, DVD etc. These are different and distinct aspects and the Examiner's broad-brush rejection of all the claims as non-statutory is improper.

Withdrawal of the rejection of claims 10, 11, 12, 22 and 23 under 35 U.S.C. § 101 is respectfully requested.

III.   Rejections under 35 U.S.C. § 102

The Examiner has rejected claims 1-14 under 35 U.S.C. § 102 as being anticipated by U.S. Patent No. 6,067,639 to Rodrigues et al. ("*Rodrigues*"). Applicant respectfully traverses the rejection.

Rodrigues is directed to software application development and discloses the incorporation of test operation objects within a computer application program. (Abstract). This provides a standardized test interface for the software development. (col. 3, lines 25-50). By incorporating the test operation objects into the computer application program, *Rodrigues* makes it easier to port between different computer environments. As stated by *Rodrigues* "the application program may be more easily tested in many environments without the need to port unique test tools to each new computing environment." (col. 4, lines 31-33).

Amended claim 1 is directed to a method for software application development suitable for processing input files with varying file formats or data structures, and recites characterizing the file format and data structure of at least one known input file type, and creating a library comprising a plurality of jobs configured to perform predetermined functions. The library of jobs comprises at least one job configured to read the file format and data structure of the known input file and convert that input file to a tab delimited file format or data structure that is common to the plurality of jobs, at least one job configured for extracting data from a file, at

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least one job configured for archiving files, at least one job configured for loading files, at least

one job configured for messaging, at least one job configured for transforming data in a file, at

least one job configured for validating data in a file, and further wherein each job includes an

indicator of job termination success or job termination failure. The plurality of jobs are

configured for linking according to the indicator of job termination success or job termination

failure.

One of the objectives of the instant invention is to support software application

development that can process input files of various different file formats or data structures. That

processing is accomplished through the linkage of a plurality of jobs. The plurality of jobs are

contained in a library of jobs. However, one problem is that input files may exist in a number of

different file formats or data structures. Thus, as an initial step in the software application

development, the file format and data structure of an input file is characterized. Where the file

format and data structure of the input file is not tab-delimited, the method uses a job from the

library to convert that input file to a tab-delimited file format or data structure that is common to

the plurality of jobs. In this way, a set of common tools can then process the information that is

in the tab-delimited file format or data structure that is common to the plurality of other jobs.

The invention creates other jobs that can be used to process the input file, after conversion to a

tab-delimited file format or data structure. Those other jobs include extracting data from the file,

archiving the file, loading the file, messaging, transforming data in the file and validating data in

the file.

The Examiner points to column 4, lines 16-36 of *Rodrigues* as disclosing convert

the input file to another file format or data structure, through porting the application, and thus

making the test tool available in any computing environment. Applicant respectfully submits that

porting a software application for use in different computing environments as described in *Rodrigues* does not disclose or suggest converting an input file to another file format, and particularly to a tab-delimited format or structure. *Rodrigues* only discloses that the underlying application can be ported to different computing environments.

The Examiner points to col. 6, lines 10-19 as disclosing validating data in a file, but careful review of that part of *Rodrigues* reveals that the validation is done by the development team, not by one of the jobs in the library of jobs as recited in claim 1, and the validation is of the application program, not the data in a file.

The Examiner points to col. 4, lines 27-33 as disclosing archiving data from a file, but again careful review of that part of *Rodrigues* does not reveal archiving. Instead, the cited portion of *Rodrigues* discloses porting from one computing environment to another. As the specification of the instant invention explains, one of the purposes of archiving is to create file back-ups. (page 26, lines 14-16). Thus, *Rodrigues* does not disclose or suggest one of the plurality of jobs in the library configured for archiving files.

The Examiner points to col. 3, lines 33-39 as disclosing extracting data from a file, however that portion of *Rodrigues* discloses standardized testing interfaces or hooks, it does not disclose extracting data from a file. As an example in the instant invention, a job configured to extract data extracts specified columns from a file in the order specified. It is commonly used to rearrange columns in a file or to retrieve only a few columns from a file. (page 30, lines 8-9). Thus, *Rodrigues* does not disclose or suggest one of the plurality of jobs in the library configured to extract data from a file.

Applicants respectfully submit that there is no such teaching or suggestion in *Rodrigues* for all of the features of claim 1 as discussed above and ask the Examiner to withdraw

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the rejection of claim 1 over *Rodrigues*. Claims 10-14 and 21-24 include similar elements and applicant submits that they are also allowable over *Rodrigues*.

IV.   <u>Rejections under 35 U.S.C. § 103</u>

The Examiner has rejected claims 15-26 under 35 U.S.C. § 102 as being unpatentable over *Rodrigues* in view of "applicant's choice of selecting the delivery method of data." The Examiner states the feature is considered a choice of design and merely a selection not related to the development of the software application. Applicant respectfully traverses the rejection. Claims 14-20 are directed to methods for processing a data file, not methods for software application development as in claims 1-10. Therefore, the choice of delivery method in claims 14-20 is not merely a choice of design. It is related to the method for processing a data file. Further, there is nothing inherent or obvious in the "choice of delivery method" recited in claims 15-17, and applicant submits that the Examiner has not made the required prima facie case for obviousness. Accordingly withdrawal of the rejection as to claims 15-24 at least for that reason is requested.

In addition, independent claims 21-24 have been amended and for reasons similar to the reasons provided above with respect to claim 1, *Rodrigues* does not disclose or suggest all of the elements, and claims 21-24 are therefore allowable over *Rodrigues*.

V.   <u>Request for Reconsideration</u>

Applicant respectfully submits that the claims of this application are in condition for allowance. Accordingly, reconsideration of the rejection and allowance is requested. If a conference would assist in placing this application in better condition for allowance, the undersigned would appreciate a telephone call at the number indicated.

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Respectfully submitted,
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October 17, 2007

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